



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------|------------------|
| 09/976,471 | 10/11/2001 | James L. Jason JR. | 10559-504001 / P11796 | 9923 |
| 20985 | 7590 | 06/02/2005 | EXAMINER | |
| FISH & RICHARDSON, PC 12390 EL CAMINO REAL SAN DIEGO, CA 92130-2081 | | | TIV, BACKHEAN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2151 | |

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/976,471

Applicant(s)

JASON ET AL.

Examiner

Backhean Tiv

Art Unit

2151

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Detailed Action

Claims 1-34 are pending in this application. This is a response to the request for reconsideration filed on 4/7/05.

Specification

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Determination of message source in network communications for unwanted messages.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-34 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,662,230 issued to Eichstaedt et al.(Eichstaedt).

As per claim 1,12,20,24,26,31,33 Eichstaedt teaches a method comprising:
generating information, at first and second points of a network, about unwanted communications that are adapted to substantially reduce the ability of a target device to respond to other communications(Abstract, Fig.1, col.5, lines 39-42, col.6, lines 21-35);
and

analyzing the information generated at the first and second points to identify which of the points first carried the unwanted communications(Abstract, Fig.1-2,col.3, line 41-col.4, line 38; the timestamp keeps track of when the request is sent); blocking communications passing through the first network to the second network(Abstract, Fig.3).

As per claim 2, the method of claim 1, also including detecting the direction of the unwanted communications(col.3, line 41-59)

As per claim 3, the method of claim 1, also including identifying the target device(col.3, line 41-59).

As per claim 4, 15-18,27 also including statistically analyzing the communications to determine if an uncharacteristically large number of communications have passed through at least one of the network points(col.3, line 60-col.4, line 18).

As per claim 5,22,30 the method of claim 1, also including statistically analyzing the communications to determine when an uncharacteristically large number of communications have been targeted toward the target device(col.3, line 60-col.4, line 18).

As per claim 6, 19 also including correlating communications request messages with acknowledgement messages(col.11, lines 10-13).

As per claim 7, the method of claim 1, also including communicating information about the unwanted communications to brokers(Abstract).

As per claim 8, the method of claim 7, also including communicating information about the unwanted communications among brokers(Abstract).

As per claim 9,13,23,28,29 also including blocking a portion of communications passing through the point through which the unwanted communications originated(col.3, line 41-col.4, line 67).

As per claim 10, 14 also including blocking a portion of communication request messages passing through the point through which the unwanted communications originated(col.3, line 41-col.4, line 67).

As per claim 11, the method of claim 1, in which the target device comprises a web server(col.3, line 41-col.4, line 67).

As per claim 21, in which the communications analyzer also includes:
an interface monitor corresponding to each interface device; and
a communications link between the interface monitors(col.3, line 39-col.4, line 67).

As per claim 25, in which the communications monitor includes a plurality of interface monitors for monitoring the passage of messages through a plurality of network points(col.1, line 49-col.3, line19).

As per claim 32, 34 also capable of configuring a computer to block a portion of the communications passing through the point that first carried the unwanted communications(col.3, line 41-col.4, line 18).

Response to Arguments

The applicant has amended claims 1,12,31,33 to overcome the 112 2nd paragraph rejection, therefore examiner withdraws this rejection.

Applicant's arguments filed 4/7/05 have been fully considered but they are not persuasive.

The applicant argues that Eichstaedt does not teach or suggest "generating information, at first and second points of a network, about unwanted communications" and "first and second interface devices for detecting and generating information about unwanted messages directed to a target device." The examiner disagrees. Eichstaedt, teaches " generating information, at first and second points of a network, about unwanted communications and first and second interface devices for detecting and generating information about unwanted messages directed to a target device", in Fig.1, col.5, lines 39-42, col.6, lines 21-35. Eichstaedt teaches that spiders or webcrawlers make requests through clients machines for information from the server, these request are unwanted communication. One ordinary skilled in the art would consider that each client machines are network points in the network and interface devices, and a request for information is generating information about unwanted communications.

The applicant argues that Eichstaedt does not teach or suggest "identify which of the points first carried the unwanted communications". The examiner disagrees. Eichstaedt, Abstract, Fig.2, col.3, line 41-col.4, line 38, teaches that the server can determine when a request is sent by the timestamp(Fig.2, element 34). This timestamp, has the date and time of the request, therefore the server can identify which of the points first carried the unwanted communication.

The applicant argues that Eichstaedt does not teach "identifying a source sub-network of unwanted communications." The examiner disagrees. Eichstaedt, Fig.1, teaches multiple computers connected to a gateway. Computers connected to a gateway is a sub-network since a sub-network is merely a network connected to a

larger network. The applicant argues that Eichstaedt does not disclose that the sub-network could be a source of unwanted communication. Eichstaedt, col.5, lines 39-42; teaches that spiders or webcrawlers can operate through a set of client machines.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Backhean Tiv whose telephone number is (571)272-3941. The examiner can normally be reached on 9 A.M.-12 P.M. and 1 -6 P.M. Monday-Friday.

Art Unit: 2151

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Backhean Tiv
2151
5/27/05


JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100